

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER06-456-000
ER06-456-001
ER06-456-002

ORDER ON COST ALLOCATION REPORT AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 26, 2006)

1. On January 5, 2006, PJM Interconnection, L.L.C. (PJM) filed a report of the allocations of cost responsibility for certain transmission upgrades approved by the PJM Board of Managers (PJM Board) as part of PJM's Regional Transmission Expansion Plan (RTEP), and revised tariff sheets to identify the upgrades and state the approved cost allocations in PJM's Open Access Transmission Tariff (OATT) (January 5 Filing). On March 1, 2006, PJM filed to amend the January 5 Filing to reflect amended cost allocations for the projects included in the January 5 Filing and to add 35 additional upgrades (March 1 Filing). On March 29, 2006, PJM filed an amendment to the March 1 Filing to correct an error for one upgrade and delete another. In this order, we accept for filing PJM's revised tariff sheets, suspend them, to become effective May 30, 2006, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On January 5, 2006, in accordance with Schedule 12 of the PJM OATT and section 1.5.6 of Schedule 6 of the PJM Operating Agreement, and pursuant to section 205 of the Federal Power Act (FPA),¹ PJM filed a report allocating cost responsibility for certain transmission upgrades approved by the PJM Board (Required Transmission Enhancements). These upgrades were approved as part of PJM's RTEP. In the January 5

¹ 16 U.S.C. § 824d

Filing, PJM included revised tariff sheets to identify the upgrades and state the approved cost allocations in the appropriate portions of Schedule 12 of the OATT. On March 1, 2006, PJM filed an additional 35 upgrades that were approved by the PJM Board in December, 2004. In the March 1 Filing, PJM also amended the cost allocations for five upgrades included in the January 5 Filing; these amendments were approved by the PJM Board on December 6, 2005, but were not reflected in PJM's January 5 Filing. On March 29, 2006, PJM filed an amendment to the March 1 Filing to correct an error for one upgrade and delete another.

3. Schedule 6 of the PJM Operating Agreement sets forth PJM's RTEP Protocol. PJM periodically prepares an updated RTEP pursuant to this protocol, with input from the PJM Transmission Expansion Advisory Committee (TEAC) and Planning Committee. PJM states that the RTEP provides for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, and to maintain and enhance the efficiency of PJM's wholesale electricity markets.

4. For each transmission system expansion and upgrade, PJM must designate the Transmission Owner (or owners or other entities) responsible to construct, own and/or finance each transmission upgrade included in the RTEP. PJM also designates the PJM market participants responsible for bearing the costs of the facility or upgrade. Schedule 6, section 1.5.6(f) and (g) of PJM's Operating Agreement provides that the RTEP will assign cost responsibility to the market participant(s) in one or more zones that will bear cost responsibility for each transmission enhancement or expansion, as and to the extent provided by any provision of the PJM tariff.

5. According to Schedule 12 of the PJM OATT, after the Board approves a new or updated RTEP that includes system upgrades or expansions, PJM will designate (in the Schedule 12 Appendix) the customers using point-to-point transmission service and/or network integration transmission service that will be subject to a Transmission Enhancement Charge for the recovery of costs of each planned upgrade. Schedule 12 also provides that PJM will file a report of the designation with the Commission.

6. On December 6, 2005, the PJM Board approved a revised RTEP that includes numerous system upgrades and improvements to comply with reliability criteria. (The approved plan also contains a single economic transmission upgrade.) PJM states that the approved cost allocation for each upgrade is expressed as the proportional (percentage) responsibility as only cost estimates were available at the time. Further, PJM explains that all allocations are made to all firm point-to-point and network integration transmission customers in each zone or to withdrawals by direct current merchant transmission facilities. PJM states that there are no sub-zonal allocations to PJM transmission customers or other market participants.

7. According to PJM, it allocated cost responsibility for each of the reliability-based upgrades based on the extent to which load in each zone contributes to the violation of reliability criteria. Further, PJM explains that the methodology it used to allocate costs included in the filings is the same methodology it has used historically to allocate cost responsibility. PJM asserts that it has presented and explained the methodology to various stakeholder groups during the RTEP process. PJM states that its methodology remains applicable as the current RTEP, like all previous expansion plans, includes only zonal allocations of cost responsibility. PJM notes that no alternative allocation methodologies have been suggested through the committee structure.

8. PJM's filings include the costs of certain planned upgrades allocated to the Neptune Regional Transmission System (Neptune). PJM states that Neptune's planned firm withdrawals of power from the PJM system—via its D.C. transmission line—are modeled as the equivalent of network load where withdrawals will occur. PJM explains that the planned commencement of Neptune's operations in 2007 has caused, in part, the need for certain reliability upgrades and, thus, Neptune is allocated partial responsibility for these costs. PJM's March 1 Filing includes a second merchant transmission project, East Coast Power L.L.C. (ECP), to which it has made an allocation of costs. PJM explains in this filing that it made the allocation to ECP using the same cost-causation-based allocation that PJM used for its allocation to Neptune. PJM states that this allocation is consistent with the Commission's orders that direct that the costs of reliability-based upgrades may be allocated to Neptune and/or its customers.² PJM states that its report and Schedule 12-Appendix neither address nor suggest whether such costs ultimately should be paid by Neptune or ECP, their transmission customers, or by PJM market participants that deliver power to these projects' points of withdrawal. PJM states that its allocation of cost responsibility to merchant transmission projects and recovery of the upgrade costs for which responsibility is allocated to them will be governed by the affected Transmission Owners' establishment of rates.

9. As stated above, a single economic upgrade is listed in the January 5 Filing. Cost responsibility for this transmission upgrade is based on the change in Locational Marginal Price (LMP) to the affected load resulting from the planned upgrade. PJM states that, as all affected load was located in the Delmarva Power & Light zone, customers in that zone are allocated 100% of the cost responsibility for this upgrade.

² *Neptune Regional Trans. Sys., LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098, at P 31, *reh 'g denied*, 111 FERC ¶ 61,455, at P 26-27 (2005), *appeal pending sub nom. Pub. Svc. Elec. & Gas Co. v. FERC*, No. 05-1325 (D.C. Cir. filed August 16, 2005) (*Neptune*).

II. Effective Date

10. PJM requests that all revised tariff sheets submitted in these dockets become effective on May 30, 2006.

III. Procedural Matters

11. Notice of PJM's January 5 Filing was published in the *Federal Register*, 71 Fed. Reg. 3080, with interventions and protests due on or before January 26, 2006. On January 24, 2006, PJM filed a motion for an extension of time until February 6, 2006. In filing that request, PJM noted that paragraph (b) of Schedule 12 of the PJM OATT provides that parties have 30 days from the date of filing to review any report on RTEP cost allocations submitted by PJM. PJM stated that certain stakeholders expressed concern that the Commission's notice did not provide the full 30-day review period. The Commission issued a Notice of Extension of Time on January 26, 2006, extending time for filing protests and comments until February 6, 2006, as requested. Timely motions to intervene or protest complying with the Commission's January 26, 2006 comment due date were filed by Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively FirstEnergy), Allegheny Power,³ Allegheny Energy Supply Company, LLC, American Municipal Power-Ohio, Inc. (AMP-Ohio), H-P Energy Resources LLC (H-P), North Carolina Electric Membership Corporation, American Electric Power Service Corporation, the Public Power Association of New Jersey (PPANJ), the Blue Ridge Power Agency, Exelon Corporation, the Illinois Municipal Electric Agency, UGI Utilities, Inc., the New Jersey Board of Public Utilities, Baltimore Gas and Electric Company (BG&E), The Dayton Power and Light Company and Pepco Holdings, Inc. and its public utility affiliates⁴ (collectively PHI) filed motions to intervene. The Long Island Lighting Company (LIPA) and Neptune filed a timely joint motion to intervene. On February 3, 2006, PJM filed a Motion for Extension of Time until March 31, 2006, for interested parties to submit protests or comments. In the same motion, PJM also proposed to modify the effective date, to May 9, 2006, of the revised tariff sheets that it submitted with the January 5 Filing. The Commission issued a February 3, 2006 notice granting PJM's motion. PPL Electric Utilities Corporation, the Southern Maryland Electric Cooperative, the City of Hagerstown and the Town of Thurmont, Maryland and the Town of Front

³ Allegheny Power is the trade name for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

⁴ Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("Delmarva") and Atlantic City Electric Company ("Atlantic City").

Royal, Virginia (collectively the MD Municipalities) filed motions to intervene on February 6, 2006.⁵ The Office of the People's Counsel of the District of Columbia filed a motion to intervene out of time on February 10, 2006. Mirant Energy Trading, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC (collectively, Mirant Parties) jointly filed a motion to intervene and, alternatively, a motion to intervene out of time on February 24, 2006. The District of Columbia Public Service Commission (DPSC) filed comments on February 28, 2006.

12. Notice of PJM's March 1 Filing was published in the *Federal Register*, 71 Fed. Reg. 13,121, with interventions and protests due on or before March 31, 2006. Timely motions to intervene or protests were filed by Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, Pepco Holdings, Inc., Dominion Resources (Dominion), Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company (collectively the PSEG and PHI Companies), the Pennsylvania Office of Consumer Advocate, Allegheny Electric Cooperative (AEC), FirstEnergy, the Borough of Chambersburg, Pennsylvania (Chambersburg), Old Dominion Electric Cooperative (ODEC), the Delaware Municipal Electric Cooperative (DEMEC), the MD Municipalities, the Maryland Office of People's Counsel, the New Jersey Board of Public Utilities (NJBPU), Duquesne Light Company, Indiana and Michigan Municipal Distributors Association, Reliant Energy, Inc., Southern Maryland Electric Cooperative. LIPA and Neptune jointly filed a timely protest.

13. On March 29, 2006 PJM filed to amend an error in one of the upgrades in the March 1 Filing. PJM requested that the Commission keep the same comment due and effective dates. The Commission issued an additional notice, which was published in the *Federal Register*, 71 Fed. Reg. 91,473, specifying April 14, 2006 as the comment due date. The Public Utilities Commission of Ohio filed a timely motion to intervene.

14. Allegheny Power filed a motion for leave to answer and answer on April 14, 2006. PJM filed an answer to protests on April 17, 2006. On April 17, 2006, Neptune and LIPA filed a motion for leave to respond and joint response to comments of PSEG and PHI, FirstEnergy and NJBPU. On April 20, 2006, Neptune and LIPA filed a joint reply to PJM's answer. On April 18, 2006, FirstEnergy, and PSEG filed a motion for leave to answer and an answer to Neptune and LIPA. On May 2, 2006, ODEC filed an answer.

⁵ The town of Front Royal, Virginia joined the other parties in the February 6 motion to intervene. Front Royal was not listed as a party to the MD Municipalities' March 31 protest.

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission finds that granting all late-filed motions to intervene filed up to the date of issuance of this order will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we will grant the late-filed motions to intervene.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

IV. Protests

A. Allocation of Costs

17. Dominion supports the proposed cost allocations as reasonable and appropriate. PPANJ raises the issue of whether the allocation of cost responsibility constitutes a rate or charge that must comply with section 205 of the FPA. PPANJ also raises the issue of whether this filing permits the collection of rates or is a request for Commission approval of allocations that must be applied when the Commission approves rates related to these transmission projects. The MD Municipalities state that PJM has failed to include a full description and justification for the cost allocations in response to Commission rules and previous orders. DEMEC and AEC contend that because PJM has not demonstrated that its proposed allocations of cost responsibility are just and reasonable, the Commission should set these allocations for hearing.

18. Numerous parties, including LIPA and Neptune, ODEC, MD Municipalities, PSEG and PHI Companies protest the proposed allocations of specific upgrade projects (identified below).

19. H-P argues that the RTEP is an inadequate response to large congestion costs and reliability concerns. H-P states that gross congestion costs in PJM between August 2003 and July 2005 totaled more than \$4.2 billion. H-P contends that in the summer of 2005, the estimated gross congestion was \$2.3 billion, more than half of which occurred on three west-east 500 kV lines: Bedington-Black Oak, Doubs-Mt. Storm, and Mt. Storm-Pruntytown. H-P does not contest PJM's proposed cost allocation; rather, it argues that the RTEP proposal would relieve only a fraction of the congestion problem, and contends that PJM has not explained why it proposes to leave a deficiency in place. H-P further argues that once the upgrade had been identified as required for reliability purposes, PJM

did not complete an economic analysis. Instead, H-P contends that PJM assumed that the selected upgrade was the appropriate response. H-P states that PJM proposes to install the upgrade by June 2008, but should be directed to implement the solution in an expedited manner. H-P argues that the cost of fully relieving the problem, relative to the recurring congestion costs, is small. Further, H-P argues that the Bedington-Black Oak line is important to reliable service in Washington, DC. Finally, H-P argues that the Commission should consolidate this proceeding with the proceeding in Docket EL05-145, because it also involves reliability in the Washington, DC. area.⁶

20. Pepco and DCPSC answer that it is not appropriate to consolidate this proceeding with Docket No. EL05-145, as requested by H-P, contending that there are no issues in common and consolidation is not consistent with Commission precedent where it typically consolidated for purposes of hearing and decision. (We note that the Commission has not set Docket No. EL05-145 for hearing.). Both parties also note that H-P is not a participant in Docket No. EL05-145.

21. In its answer, H-P responds that the Commission should direct PJM to file a long term plan to maintain adequate reliability in Washington, DC, and surrounding region, thereby correcting the reactive problem on the Beddington-Black Oak circuit. In its supplemental protest, H-P further cites as evidence that PJM should be directed to correct the west to east congestion problems the PJM filing with the Department of Energy regarding the designation of National Interest Electric Corridors.

22. PJM, in its answer, explains that this filing concerns only cost allocation for the transmission upgrades, as directed by the Commission and provided for in its tariff. This filing is not, according to PJM, the appropriate forum for disputes about the RTEP process. Therefore, PJM insists that this filing is not about which projects should be included in the RTEP, a matter for the process outlined in Schedule 6, and that Schedule 6 provides for alternative dispute resolution to the extent parties disagree with the RTEP. PJM also reiterates that this proceeding is not a rate case through which affected Transmission Owners seek to establish transmission rates, and, therefore, PJM insists that there is no need to address these issues raised by parties including DEMEC.

⁶ The District of Columbia Public Service Commission filed a petition requesting that the Commission prevent Mirant Potomac River, LLC from shutting down its Potomac River generating station. The Commission issued an order on January 9, 2006 that directed PJM and Pepco to file a plan to address reliability in the Washington, DC area. *D.C. Pub. Serv. Comm'n*, 114 FERC ¶ 61,017 (2006). This proceeding deals with transmission upgrades to satisfy reliability requirements addressed in the PJM/Pepco compliance filing.

23. PJM also notes in its answer that the allocations and methods were discussed at stakeholder meetings, where parties had ample opportunity to participate in the development of the RTEP cost allocations, and to ask questions or express concerns. Also, the TEAC addressed these issues in accordance with the process in Schedule 6. Further, PJM states that these issues were addressed at the Transmission Owner Agreement Administrative Committee on several occasions.

B. Merchant Transmission Issues

24. Neptune and LIPA protest PJM's filing because they contend that PJM's allocation of transmission upgrade costs through RTEP to Neptune is not consistent with PJM's Tariff and OATT, or with Commission directive.⁷ Specifically, Neptune and LIPA argue that under Schedule 6 of the PJM Operating Agreement, costs allocated through RTEP must be assigned to designated zones within PJM, and that since Neptune is not a designated zone, costs cannot be allocated to it. Further, Neptune and LIPA argue that PJM is treating Neptune unfairly by seeking to allocate cost to it for firm Transmission Withdrawal Rights, while not allocating costs to other export and capacity transactions. Neptune and LIPA also contend that PJM has not demonstrated that the identified zones contribute to, or benefit from, the individual system upgrades for which PJM is proposing to make cost allocations. These protestors further contend that PJM is modeling exports over Neptune as "network load," contrary to PJM's Tariff under which Neptune is to receive point-to-point service. Moreover, these protestors argue that PJM's treatment of Neptune as a Responsible Customer in the RTEP process is improper. They insist that while Neptune is a merchant transmission provider and interconnection customer, it is not a transmission customer and, therefore, PJM cannot treat Neptune as a Responsible Customer under Schedule 12 of PJM's Tariff.

25. NJBPU argues that, although PJM contends its allocation of cost responsibility to Neptune and ECP is not intended to indicate a position regarding which entity is ultimately responsible for these costs, NJBPU argues that Neptune and ECP should pay for these costs. Furthermore, NJPBU contends that these merchant transmission projects do not benefit other PJM market participants but, rather, act as an "electric sink," harming the reliability and operational security of the PJM grid.

26. On March 31, 2006, PSEG and PHI filed joint comments which support PJM's proposed allocation of costs to merchant transmission, and contend that to do otherwise would be inconsistent with ensuring that all beneficiaries pay for upgrades that are approved through RTEP.

⁷ *Neptune*, 112 FERC ¶ 61,276 at P 13 (2005).

27. On March 31, 2006, FirstEnergy filed a protest explaining that while it supports PJM's proportional allocation of RTEP upgrades to both multiple zones and merchant transmission projects, it argues that PJM should have included sub-zonal allocations for merchant transmission.

28. On April 17, 2006, Neptune and LIPA filed a motion and joint response to the comments filed by PSEG, and PHI Companies, FirstEnergy and NJBPU in which they reiterate their position that PJM has not complied with its tariff when it allocated RTEP costs to merchant transmission owners. Neptune and LIPA disagree with PSEG's assertion that the only viable solution for allocating merchant transmission costs is to make these allocations directly to the merchant transmission entities. Neptune and LIPA insist that allocations through RTEP must be made to transmission customers, pursuant to Schedule 12 of PJM's OATT. Further, Neptune and LIPA argue that PSEG and FirstEnergy's request to allocate Schedule 12 costs solely to Neptune is unduly discriminatory, and would create a barrier to the development of independent transmission within PJM by imposing Schedule 12 costs upon merchant transmission owners, but not upon existing Transmission Owners. Finally, Neptune and LIPA insist that NJBPU's comments regarding reliability is not within the scope of this filing, and have no basis in fact.

29. On April 18, 2006, FirstEnergy and PSEG filed a joint answer to the protest filed jointly by Neptune and LIPA. FirstEnergy and PSEG argue that Neptune and LIPA are premature in their protest of PJM's allocation of RTEP costs and related Transmission Enhancement Charges to Neptune because PJM's filing does not allocate costs or Transmission Enhancement Charges to any particular responsible party. FirstEnergy and PSEG also contend that PJM's filing is in compliance with Commission precedent.⁸ However, FirstEnergy and PSEG recommend that if the Commission decides to address in this order which entities should pay the Transmission Enhancement Charges associated with RTEP costs for merchant transmission, in accordance with Schedule 12, then the Commission should find that merchant transmission owners should be responsible for RTEP costs and associated Transmission Enhancement Charges. Finally, these protestors argue that PJM's proposed cost recovery allocation is consistent with Commission orders

⁸ Citing *Neptune*, 111 FERC ¶ 61,455 at P 25.

requiring merchant transmission developers to assume the full market risk and financial risk for their projects.⁹

30. PJM addressed issues concerning merchant transmission in its April 17, 2006 answer, by responding that its cost allocation to specific customers within a zone is appropriate under Schedule 12. Further, PJM's cost allocation for merchant transmission is consistent with the Commission's directive that an affected zone can "include a merchant transmission project owner with firm transmission withdrawal rights or the load that is using the merchant transmission facilities."¹⁰

31. Neptune and LIPA filed a joint reply to PJM's answer in which they contest PJM's comment that the entity that will pay the transmission charges arising from the RTEP process will be determined when Transmission Owners file for a rate proceeding. Neptune and LIPA contend that it is PJM's responsibility to determine the Responsible Customer for Schedule 12 transmission service charges, not the Transmission Owners. Further, Neptune and LIPA argue that if PJM treats Neptune as if it were a PJM load, then PJM should make network transmission service available to PJM transmission customers delivering to the Neptune line.

C. Other Issues

32. Several parties, including ODEC, the Southern Maryland Electric Cooperative, DEMEC, AEC, Chambersburg, and the MD Municipalities, argue that PJM has not demonstrated that its methodology of allocating costs is just and reasonable. These parties argue that PJM's methodology utilizes a snapshot-in-time approach and, thus, fails to reflect economic dispatch or flow pattern changes over the lifetime of transmission enhancements. These parties also argue that transmission upgrades provide a number of benefits (e.g. increased reliability, facilitation of competitive energy and capacity markets, mitigation of congestion), and, as such, PJM's cost allocation methodology should recognize the potential beneficiaries over the life of an upgrade. These parties argue that higher voltage transmission facilities (e.g., 200 kV and above) support regional reliability and regional markets, and the costs of such should be

⁹ Protestors cite to *TransEnergie Ltd.*, 91 FERC ¶ 61,230 (2000); *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001), *order on reh'g*, 96 FERC ¶ 61,326 (2001); *TransEnergie Ltd.*, 98 FERC ¶ 61,144 (2002); *TransEnergie Ltd. and Hydro One Delivery Services Inc.*, 98 FERC ¶ 61,147 (2002); *Northeast Utilities Service Co.*, 98 FERC ¶ 61,310 (2002).

¹⁰ *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,276 at P 13 (2005).

allocated regionally. These parties assert that the approach proposed by ODEC and BG&E for PJM's regional rate design in Docket No. EL05-121-000 would produce a just and reasonable allocation of reliability upgrade costs.¹¹

33. FirstEnergy argues that PJM's methodology should examine individual loads within a zone, and allocate project costs to each load that contributes to a constraint. FirstEnergy asserts that the Commission should require PJM to modify the 2005 RTEP Report accordingly. PSEG and the PHI Companies offer a number of "refinements" to the RTEP process, among these, to recognize the impact of phase-angle regulators. These protestors also raise concerns about aspects of PJM's cost allocation methodology that they believe result in an inequitable and disproportionate allocation of costs to load in the East.

34. ODEC and AEC, among others, argue that there should be no allocation of costs at a sub-zonal level. FirstEnergy also argues that the RTEP process should include minimum thresholds for cost allocations. FirstEnergy asserts that the RTEP should only allocate the costs of projects of \$5 million or more and only to those customer loads with a cost allocation of 10% or more. FirstEnergy argues that such thresholds will reduce the number of projects and loads for allocation and, thus, will improve the administrative efficiency of the RTEP process. PSEG and the PHI Companies submit that lower voltage projects presumptively benefit local load zones and, therefore, those costs should be fully allocated to the local zone in which they are constructed.

35. ODEC, MD Municipalities and AEC dispute that there was an open, transparent and collaborative stakeholder process to discuss allocation methods. They argue that the process for cost allocation should have been addressed in a stakeholder process and memorialized in the Operating Agreement and Tariff. ODEC asserts that PJM's Operating Agreement contains generalized provisions, while important details regarding PJM's allocation criteria and methodology are contained in the PJM Manuals. ODEC argues that the cost allocation methodology affects rates customers will ultimately be required to pay and, thus, the Commission should direct PJM to include the details of the cost allocation methodology in the Operating Agreement.

36. FirstEnergy notes that certain RTEP projects are justified for operational purposes and argues that it does not appear that PJM followed the definition of operational

¹¹ In that proceeding, ODEC proposed a "highway/byway" regional rate design in lieu of the traditional "license plate" rate design in which 100 percent of the revenue requirements associated with new facilities that provide regional benefits (regardless of voltage) would be allocated regionally.

performance in generating the 2005 RTEP Report.¹² FirstEnergy states that it has concerns over operational performance upgrades in the 2005 RTEP report. FirstEnergy's concerns over operational performance upgrades are offered as general concerns and not offered with respect to specific upgrades. FirstEnergy argues that the Commission should require that PJM more fully explain and document the criteria by which projects are justified for operational performance purposes. PSEG and the PHI Companies state that projects needed for operational performance are driven by operational limitations on the system and do not rise to the level of reliability violations. PSEG and the PHI Companies submit that many of the operational performance transmission upgrades in the plan are below the 230kV level; they argue that lower voltage projects are presumptively for the benefit of local load zones and therefore their costs should generally not be allocated to multiple zones.

37. The January 5 Filing stated that the approved cost allocations contain estimates of the costs of the planned projects, as only those were available at that time and, thus, the approved cost allocation for each upgrade is expressed as a proportional (percentage) responsibility. The MD Municipalities argue that PJM does not clearly state whether charges will be based on actual costs or estimates. These parties argue that the actual costs will probably differ from the estimates, and note that PJM does not indicate whether there will be a true-up mechanism based on actual costs.

38. The MD Municipalities and PSEG and the PHI Companies argue that the filing is silent on the issue of Auction Revenue Rights (ARR) allocation. Thus, these parties assert that the Commission should confirm that entities responsible for paying for system upgrades that produce increased transmission capacity should receive the incremental ARRs that correspond to that increased capacity.

39. ODEC and Southern Maryland Electric Cooperative argue that the Commission should establish an evidentiary hearing to evaluate PJM's allocation proposal, and to permit parties to pursue the issue of whether and to what extent transmission system upgrades that provide regional benefits should be allocated regionally.

40. PJM, in its answer, argues that the Commission should reject protestors' efforts to expand the scope of the proceeding. In response to FirstEnergy, PSEG and the PHI

¹² One category of upgrades that PJM plans under the RTEP relates to projects that are needed for Operational Performance. These projects are driven by operational limitations that occur on the system. Operational performance projects do not rise to the level of reliability violations, but are often appropriate to address before a reliability violation occurs.

Companies' concerns over operational performance upgrades, PJM asserts that this proceeding is not about which upgrades or enhancements should be included in the regional plan, the manner in which they are selected, or whether the PJM Board has sufficiently explained the rationale for the projects. PJM argues that the proceeding only addresses the cost allocations for such projects. PJM argues that the Commission did not direct that the RTEP projects themselves, or the manner in which they were selected, be submitted for prior review and approval. PJM further argues that stakeholder concerns with particular projects, project categories, or the content of the plan are matters to be raised in the plan development process, as specifically contemplated by Schedule 6 of the Operating Agreement, not in a Commission cost allocation proceeding.

41. In response to the concerns of MD Municipalities and DEMEC over cost estimates, PJM argues that such cost estimates provide an indication as to the scope of each project, and do not establish revenue requirements or any actual rates. PJM states that Transmission Owners have the burden of supporting their revenue requirements when they file their rates for these facilities. PJM states that there is no need for any true-up mechanism, as referenced by DEMEC.

42. PJM asserts that arguments over the inclusion of details of PJM's cost allocation methodologies in the tariff are beyond the scope of this proceeding. PJM asserts that the issue in this proceeding is not whether the governing standards should be narrowed, expressed with more specificity in the Operating Agreement and PJM OATT, or modified in any other way, but rather is only whether PJM's allocations comply with the previously approved standard set forth in the Operating Agreement.

V. Discussion

43. The Commission accepts the proposed allocation of responsibility for the Required Transmission Enhancements, and sets for hearing and settlement judge procedures the responsibility assignment of specifically identified upgrade projects discussed below. We reject the request by H-P to consolidate this proceeding with Docket No. EL05-145.

A. Cost Allocation Issues

44. This filing assigns responsibility for constructing, owning, and financing proposed Required Transmission Enhancements to Transmission Owners, and assigns a percentage responsibility for the cost of these upgrades to zones based on load flow as described earlier. According to Schedule 12 of the PJM OATT, PJM is to file with the Commission within 30 days of approval by the PJM Board, the designation of customers that will be responsible for the Transmission Enhancement Charge. The Responsible Customers are

defined as those using Point-to-Point Transmission Service and /or Network Integration Transmission Service.¹³ The Transmission Enhancement Charge is the charge established to recover the revenue requirement of the Required Transmission Enhancements that result from the RTEP projects identified by this filing and constructed by the applicable Transmission Owner. The Commission has also indicated that in developing the Transmission Enhancement Charge for transmission customers in an affected zone, PJM can include a merchant transmission owner with firm withdrawal rights or the load that is using the merchant transmission facilities.¹⁴ The provision in section 12 that obligates PJM to identify the Responsible Customers was directed by Commission order. The Commission stated that this was to enable Responsible Customers to obtain Commission review of these designations.¹⁵

45. The Commission finds that PJM has complied with the requirements of section 12 of its OATT and Schedule 6, section 1.5.6 of the PJM Operating Agreement in filing these RTEP designations identifying and assigning cost responsibility to Transmission Owners and to responsible customers within each zone. Commission review of these initial assignments is necessary because the allocations will determine which customers will ultimately be responsible for these costs. At this step the Commission reviews these allocations to determine whether they are just and reasonable.¹⁶

46. PPANJ raises issues as to whether this filing constitutes a rate change and permits the collection of rates, or whether it is a request for Commission approval of a cost allocation method that must be applied at the time the Commission approves rates for new transmission investment. PPANJ also asks whether the cost estimates in the RTEP will have any evidentiary weight in a future proceeding to determine rates for new transmission investment, or whether the final costs of new transmission investment will be subject to full review at the time rates for a particular Transmission Enhancement Charge are determined. As previously stated, this filing identifies market participants in one or more zones that will bear cost responsibility for each transmission enhancement or

¹³ PJM Tariff, Schedule 12, (b), effective June 1, 2005.

¹⁴ See *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,276 (2005) (September 15 Order).

¹⁵ See *PJM Interconnection L.L.C.*, 111 FERC ¶ 61,308 at P 49 (2005) (May 31 Order).

¹⁶ *Id.*

expansion in the event that, pursuant to Schedule 12 of the OATT, a Transmission Owner files a section 205 rate case to recover these costs or has in place an accepted formula rate permitting recovery of these costs. For those Transmission Owners without formula rates, the actual determination of revenue requirements and the cost recovery method for the Required Transmission Enhancements will be made when the Transmission Owner files for a Transmission Enhancement Charge under section 205 of the FPA, in accordance with section 12 of the PJM OATT. Through this process, each Transmission Owner will determine recovery of the costs of the transmission upgrades from the Responsible Customers identified in the filing. This forum will provide an opportunity to challenge the appropriateness of the level of costs. Therefore, the Transmission Owner-initiated proceeding for the Transmission Enhancement Charge will determine the amount and structure of the rates by which the upgrade costs will be recovered under the Tariff.¹⁷

47. The protests here challenge the allocation of the costs of the upgrades. Some parties take issue with the assignment of responsibility for specific upgrade projects as follows. LIPA and Neptune take issue with the assignments made in projects B0210, B0211, B0174, B0215, B0169, B0170, and B0213. ODEC takes issue with the proposed allocations for projects B0130, B0169, B0171, B0217, B0226, B0218, B0229, B0206, B0207, B0208, B0215, B0216, B0222, B0223, and B0224. The MD Municipalities take issue with the assumptions used to determine the allocations for B0226, B0131, B0230, B0134, and B0218. PSEG and the PHI Companies take issue with the allocation of B0226. Other parties have questioned the allocations generally, without raising specific issues relating to individual projects. Because we cannot determine based on this record whether these allocations are just and reasonable, we will provide additional process for parties that take issue with the allocations of specific projects included in this filing. We will address general protests that relate to the PJM methodology for allocation later in this order.

48. The Commission will not consolidate this proceeding with Docket No. EL05-145-000, as requested by H-P. The instant proceeding deals with the allocation of responsibility for transmission upgrades that have been evaluated by PJM and its stakeholders in accordance with the RTEP provisions in the OATT and Operating

¹⁷ In addition, the Commission has before it a filing by the PJM Transmission Owners in Docket No. ER06-880-000 to revise section 12 with respect to the allocation of transmission expansion costs to merchant transmission owners, and the calculation of transmission enhancement charges for point-to-point transmission customers. Therefore, this clarification pertains to the instant filing only.

Agreement and have been approved by the PJM Board as described above. Docket No. EL05-145-000 is an unrelated proceeding that originated from separate issues and that is evaluating the reliability consequences of the retirement of the Potomac River Generating Station. While that proceeding may take into account congestion issues as raised by H-P and many of these congestion issues are common to projects contained in the RTEP,¹⁸ it does not affect the determination of just and reasonable allocations at issue in the instant filing. This filing deals only with fully vetted transmission projects and consolidation of these dockets will not add efficiency to either proceeding.

B. Merchant Transmission Issues

49. As previously stated, PJM's RTEP procedures require it to identify the Transmission Owners that are responsible for constructing any upgrades, and to designate the Responsible Customer(s) in one or more zones that will benefit from these required upgrade. In its September 15 Order the Commission indicated that merchant transmission projects with firm withdrawal rights may be included along with network and point-to-point customers as responsible customers in an affected zone that can be allocated RTEP upgrade costs. In the instant filing, PJM claims that it is simply exercising its right under 1.5.6 (g) of Schedule 6 of its Operating Agreement to allocate RTEP upgrade costs to particular customers within a zone, in this case merchant transmission load within the zone. PJM further indicates that its allocation to merchant transmission is appropriate because its impact within a zone is effectively the same as any other load within the zone and, therefore, the reliability upgrade is equally caused by all load in the zone. PJM has indicated that there are no subzonal allocations and that all costs are allocated to network and point-to-point customers in a particular zone, or to withdrawals by direct current merchant transmission facilities. PJM allocated costs to the Neptune and ECP projects.

50. Neptune and LIPA maintain that PJM is treating merchant transmission projects in an unduly discriminatory manner. They assert that they are the only responsible customers to whom PJM has directly allocated costs under Schedule 12. In all other cost assignments, they maintain that PJM allocates the upgrade costs to the affected zones, with no separated designation of any Responsible Customer that is required to pay a specifically identified share of the project costs within a particular zone.

¹⁸ The Commission is concerned about the costs of congestion on customers in PJM and emphasizes that the reduction in congestion costs should be a high priority for PJM and the Transmission Owners. Projects should be developed and implemented accordingly.

51. The Commission's requirement in the September 15 Order that firm withdrawal rights of a merchant transmission provider be included as a Responsible Customer, was to ensure that merchant facilities along with network and point-to-point customers be responsible for an appropriate allocated share of the expansion cost PJM assigns to each transmission zone. While merchant transmission providers and their customers should be allocated an appropriate share of network upgrades, we cannot determine based on this record whether PJM has allocated appropriate costs to these entities or has done so in an unduly discriminatory manner, as Neptune and LIPA allege. We will set for hearing PJM's proposed cost allocations to the merchant transmission projects, Neptune and ECP, to ensure that the method by which PJM has allocated costs to these Responsible Customers is not unduly discriminatory or preferential, and that the proposed allocation directly correlates to their contribution to the need for such reliability upgrades.

C. Other Issues

52. A number of protests seek generic changes to the RTEP methodology that are unrelated to the allocation of costs for the specific projects at issue in this filing. For example, protests request generic changes to the Distribution Factor (DFAX) methodology used by PJM. Generic issues as to the way RTEP is applied are beyond the scope of the instant filings. PJM submitted its filings in accordance with Schedule 12 of the PJM OATT and section 1.6 of Schedule 6 of the PJM Operating Agreement and, thus, PJM has met its obligation. Section 1.6(a) of Operating Agreement Schedule 6 states:

Within 30 days after each occasion when the PJM Board approves a Regional transmission Expansion Plan, or an addition to such a plan, that designates one or more Transmission Owners to construct an economic expansion or enhancement developed pursuant to sections 1.5.6(d) and 1.5.7 above, the Office of the Interconnection shall file with FERC a report identifying the economic expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under section 1.5.6(g) above to bear responsibility for the costs of the project.

Parties seeking to alter or modify the RTEP process, or PJM's OATT or Operating Agreement, are free to file a complaint with the Commission. However, as we noted in *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006), PJM is currently in the process

of revising its RTEP process and these issues may be better addressed in that proceeding.¹⁹

53. As stated above, the Commission finds that PJM's obligation in filing these RTEP designations should be to identify and to assign cost responsibility to Transmission Owners, zones, and/or other specifically identified entities. We have set for hearing the question of whether PJM has appropriately allocated these costs in certain instances.

54. FirstEnergy argues that allocation of cost responsibility should extend to sub-zonal allocations. Section 1.5.6(g) of Schedule 6 of PJM's Operating Agreement does not require PJM to allocate cost responsibility on a sub-zonal basis and, thus, the Commission will not require PJM to do so in this proceeding. FirstEnergy also requests that we require PJM to clarify its criteria for determining which projects are needed for "operational performance." We will not require PJM to "fully explain and document" operational performance upgrade criteria in this order. FirstEnergy does not specify its concerns or in which documents it believes documentation should be inserted or to what extent the criteria should be explained.

55. Other comments suggest that PJM implement a true-up mechanism. As discussed above, this proceeding allocates costs to Responsible Customers and there should be no double counting of cost responsibility. At the hearing, parties can raise any situations in which they believe the responsibility for particular costs is being double counted.

D. Hearing Procedures

56. The Commission's preliminary analysis of PJM's filings indicates that they have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will conditionally accept and suspend for filing, subject to refund, the tariff sheets filed by PJM to implement the Cost Allocation Report, to be effective May 30, 2006, and set them for hearing and settlement judge procedures as ordered below. As we have indicated elsewhere in the order, we are only setting for hearing the allocation of cost responsibility for specific projects listed herein where parties have raised specific issues of fact related to their respective project allocations. As discussed herein, we are not setting for hearing

¹⁹ Specifically, PJM stakeholders are currently working to modify the RTEP process to more effectively support the electricity market by expanding the planning horizon and including economic analyses to take into account congestion costs. This is currently taking place in the Regional Planning Process Working Group (RPPWG).

general objections to PJM's proposed allocation or challenges to PJM's allocation methodology specified in its OATT and Operating Agreement.

57. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁰ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.²¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed tariff sheets to implement PJM's Cost Allocation Report are hereby conditionally accepted and suspended for filing, subject to refund, effective May 30, 2006, and subject to the outcome of the hearing ordered below.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of PJM's proposed filing. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

²⁰ 18 C.F.R. § 385.603 (2005).

²¹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, within fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.